

Summary: The Defendant filed a letter with the Clerk of Court in which he requested copies of his trial transcript, sentencing transcript, and docket sheet so that he can file a Section 2255 motion for habeas corpus relief. The Court ordered the Defendant to show cause by April 3, 2009, as to why he should be entitled to receive copies of the trial transcript and sentencing transcript despite having failed to obtain authorization from the Eighth Circuit Court of Appeals to file a second or successive Section 2255 motion, and despite the fact that the filing of any such petition would fall beyond the one-year period of limitation.

Case Name: USA v. Karl Robert Irwin

Case Number: 1-05-cr-21

Docket Number: 62

Date Filed: 2/27/09

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	ORDER TO SHOW CAUSE
)	
Plaintiff,)	
)	Case No. 1:05-cr-021
vs.)	
)	
Karl Robert Irwin,)	
)	
Defendant.)	

Before the Court is a letter from the defendant, Karl Robert Irwin, to the Clerk of Court which was received on January 26, 2009, and which requested copies of his trial transcript, sentencing transcript, and docket sheet. See Docket No. 61. Irwin contends that “I need these documents as soon as possible so I can file the Habeas motion I’m working on.” See Docket No. 61. The Clerk of Court’s Office has provided Irwin with a copy of the docket sheet. See Docket No. 61.

On July 14, 2005, Irwin was found guilty by a jury of possession with intent to distribute a controlled substance within 1000 feet of a school. See Docket No. 36. On June 22, 2006, Irwin filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. See Docket No. 46. On July 25, 2006, the Court denied the Section 2255 motion. See Docket No. 50. On October 10, 2006, Irwin appealed the Court's order denying the Section 2255 motion. See Docket No. 54. The Eighth Circuit Court of Appeals dismissed the appeal on January 3, 2007. See Docket No. 55.

On March 21, 2008, the Eighth Circuit denied Irwin's petition for authorization to file a successive habeas motion. See Docket No. 57. On September 25, 2008, the Eighth Circuit once again denied Irwin's petition for authorization to file a successive habeas motion. See Docket No. 59.

Irwin now requests copies of the trial transcript and sentencing transcript so that he can file another Section 2255 motion. See Docket No. 61. Irwin previously filed a Section 2255 motion on June 22, 2006. See Docket No. 46. The ability of a party to file a second or successive Section 2255 motion is addressed by 28 U.S.C. § 2255(h):

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Irwin has twice petitioned the Eighth Circuit for authorization to file a second or successive habeas motion and twice has been denied. Based on Irwin's two previous petitions to the Eighth Circuit, it is clear that he understands the requirement to obtain certification before filing a second or successive Section 2255 motion.

The right to file a motion under 28 U.S.C. § 2255 is not without limits. Pursuant to 28 U.S.C. § 2255(f), a party has a limited period of time in which to file a motion:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

The Court finds that Irwin does not have authorization from the Eighth Circuit Court of Appeals to file a second or successive habeas motion with this Court. In addition, the record reveals that Irwin may be well beyond the one-year period of limitations in which to file a habeas motion.

As a result, the defendant, Karl Irwin, is hereby **ORDERED TO SHOW CAUSE** as to why he should be entitled to receive copies of the trial transcript and sentencing transcript despite having failed to obtain authorization from the Eighth Circuit Court of Appeals to file a second or successive Section 2255 motion, and despite the fact that the filing of any such petition would fall beyond the

one-year period of limitation. Irwin shall have until Friday, April 3, 2009, to file a response to this order and to show cause for the release of copies of the trial transcript and sentencing transcript under the facts and circumstances presented.

IT IS SO ORDERED.

Dated this 27th day of February, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court